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| 10/776,885      | 02/11/2004  | Robert W. Lackey     | 32166-3             | 3330             |

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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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3634

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/776,885

Applicant(s)

LACKEY ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12-20-2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This final Office action is in response to the amendment filed October 22, 2004 by which claim 1 was amended and claims 6 and 7 were added.

#### ***Drawings***

The drawings were received on October 22, 2004. These drawings are disapproved for the following reason: Since substitute paragraph [0012] of the specification contains new matter (as advanced below), it will not be entered. *Accordingly*, since the paragraph is not being entered, the drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 56-59.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Specification***

The amendment filed October 22, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: (a) "flat, horizontal floors or bottoms" in line 3 of proposed substitute paragraph [0012], i.e., while the original drawings appear to show the floors/bottoms depicted as somewhat horizontal, there is not adequate support in the original

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specification for the floors to be flat and horizontal; (b) "the rear walls 58, 59...of section 25 are parallel to one another" in lines 9-10 of proposed substitute paragraph [0012], i.e., while the original drawings appear to show the rear walls depicted as somewhat parallel, there is not adequate support in the original specification for the rear walls to be "parallel"; and (c) "the rear walls of the sections 23, 27 are offset from one another" in lines 12-13 of proposed substitute paragraph [0012], i.e., there is no showing in the original drawings or specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is not proper support in the original disclosure for (a) the limitation "less than 15 degrees", as in line 8 of claim 1, and (b) "parallel" in line 1 of claim 6.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the

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invention. Claim 1 recites the limitation "said floors" in line 9. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,886,348, alone (Jonathan *et al.* '348).

Jonathan *et al.* '348 disclose an upright open front display comprising a plurality of side by side compartments (1/4 of the display shown in Figure 2 is defined as one compartment or section) with open fronts whereby each section has an upper (at 34 in Figure 1) and a lower compartment (at 22 in Figure 1) that are unequal in vertical dimension; an upward extending rear wall (54 - see Figure 3) is in each of the compartments, i.e., one wall for all compartments, that is sloped rearwardly from a bottom to a top in a vertical direction; laterally spaced dividers (e.g., 32 - see Figure 2) in each compartment; *with respect to claim 5*, a sign (36) extends laterally across the top of the sections.

With respect to the recitation "to accommodate downrods of different lengths" and "to support downrods placed therein in an upright position" in claim 1, it is noted that these are *functional* recitations. Thus, a reference need not explicitly show use with downrods but rather

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need only *be capable of* use with downrods. *Accordingly*, the structure of Jonathan *et al.* '348 is considered to be *capable of* use with downrods in the same way as claimed.

The claims differ from Jonathan *et al.* '348 in requiring: (a) the rear wall to slope at an angle of less than 15 degrees (claim 1); and (b) the upper compartment in each section to be shorter in vertical dimension than its lower compartment (claims 3 and 7).

*With respect to (a)*, although Jonathan *et al.* '348 do not disclose the angle at which the rear wall is sloped, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided the rear wall with the specified angle, for ease in viewing of products placed therein and ease in manufacture.

*With respect to (b)*, although Jonathan *et al.* '348 show the lower compartments being shorter than the upper compartments in each section, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the display having the upper compartments be shorter in height, as called for in the claims, for ease in use and organizational capabilities since the shorter upper compartments can hold and store objects placed therein at closer to an eye level thereby increasing ease in to the consumer.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jonathan *et al.* '384 as applied to claims 1-3, 5, and 7 above, and further in view of U.S. Patent No. 5,505,315 (Carroll '315).

Jonathan *et al.* '348 disclose the display as advanced above.

The claims differ from Jonathan *et al.* '348 in requiring laterally extending rails at the bottom of each compartment that extend rearwardly in a bottom to top direction.

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Carroll '315 teaches a display (see Figure 4b) that has rearwardly extending rails extending across each of the compartments.

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display of Jonathan *et al.* '348 with rails in each compartment for ease in identification of products placed therein.

#### ***Comments***

It is noted that although claim 6 has not been rejected as being unpatentable under Section 103, claim 6 is not deemed to be allowable at this time, in view of the Section 112, 1<sup>st</sup> paragraph rejection, advanced above.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection. Although the same reference, i.e., Jonathan *et al.* '348 has been utilized, the scope of the claims (at least claim 1) has been changed by the amendment reciting "less than 15 degrees", and thus a new grounds of rejection has been applied.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.


Please note, that due to the relocation of the U.S. Patent and Trademark Office from Arlington to Alexandria, Virginia, the Examiner's phone number will be changed. After April 5, 2005, please contact the Examiner at (571) 272-6832.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
February 3, 2005